IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7878 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SABARKANTHA DIST COOP. MILK PRODUCERS UNION LTD -

Petitioner(s)

Versus

NARANSINH H RAJPUT - Respondent(s)

==========

Appearance :
NANAVATI & NANAVATI for Petitioner(s) : 1,
MR MUKESH H RATHOD for Respondent(s) : 1,
==========

CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 19/01/2006

ORAL JUDGMENT

1. The petitioner i.e. M/s. Sabarkantha District Co-operative Milk Producers Union Limited, has filed this petition under Article 227 of the Constitution of India praying for quashing and setting aside the award passed by the 2nd Labour Court, Ahmedabad in Reference (LCA) No.1902 of 1988 on 25th April 1994 whereby the respondent was reinstated with continuity of service with full back-wages and all consequential benefits.

2. The petition was admitted and rule was issued on 16.06.1994. The court has granted interim relief in terms of Para-6(B) of the petition whereby, the operation and implementation of impugned award was stayed by this Court.

3. During the pendency of the petition, the respondent has moved Civil Application No.1755 of 1994 for vacating ad-interim relief. While disposing of the said Civil Application on 26.10.1994 this Court has directed the present petitioner to pay last drawn wages of the

respondent during the pendency of petition untill further orders. The court has passed further order on the Civil Application on 23rd November, 1994 whereby the order dated 26.10.1994 granting interim relief to the petitioner was modified to the extent that the wages last drawn should be considered as those wages drawn on the date of termination of the services plus the yearly increments and the Dearness Allowances to be worked out till the date of the Award and the same has to be paid to the workman during the pendency of the proceedings before the high court.

4. It is the case of the petitioner that the respondent was employed with the petitioner as a Watchman from 1st of November, 1979. The respondent was a habitual absentee and also used to overstay his leaves again and again. The respondent was served with show cause notice in the year 1979 to 1981 with respect to the said conduct. Moreover, he was found to be sleeping while on duty on 17th , 18th and 19th of December, 1981. Pursuant thereto, after taking appropriate action, the respondent was

suspended. The respondent was also involved in some theft and the police lodged a complaint against him for the same on 16th November, 1981. The respondent remained absent without leave from 21st April, 1982 to 25th May 1982. Again the respondent was found sleeping during duty hours on 28th June, 1982 and therefore, he was served with a show cause notice dated 17th July, 1982 and legal, valid and proper inquiry was held against him between 3rd August, 1982 and 1st September, 1982. Again he was served with a show cause notice for the misconduct for the reasons mentioned in the show cause notice dated 9th December, 1982 and the legal, proper and valid inquiry was held against him. Again the complaint was received against him on 22nd September, 1983 whereupon, the respondent was suspended from 26th September, 1983 to 28th September, 1983 and the respondent was suspended on 26.09.1983 to 28.09.1983. The respondent was also involved in some fraud with the “Central Bank of India”, wherein he had opened various accounts in fictitious names. The respondent was also not wearing the uniform and therefore, he was served

with notice in the year 1985. Thus, the past conduct of the respondent was not satisfactory and was indisciplined.

5. It is further mentioned in the petition that on or around 20th September, 1986, a complaint was received that the respondent has committed theft of 100 kg of Nilgiri Wood. In the monsoon of that year, there was cyclone and because of which certain trees in the premises of the petitioner were uprooted and it was the duty of the respondent, while he was on duty to guard the same, the same being the property of the petitioner. However, it was found that, instead of guarding the property of the petitioner, the respondent had committed theft of the wood. The inquiry was held against the petitioner and inquiry officer has found allegations levelled against the respondent proved. The respondent was served with the second notice. Ultimately, respondent was dismissed from the service of the petitioner from 25th May, 1987. The respondent thereafter made complaint before the Hon'ble Industrial Tribunal being Reference

(IT)No.156 of 1987 for violation of Section 33. The Hon'ble Labour Court has allowed the reference and has directed reinstatement of the respondent with full backwages and has directed to withhold one increment only without permanent effect. Being aggrieved by the said order, the petitioner has filed the present petition before this Court.

6. Mr. Shukla for Mr.S.I.Nanavati, learned advocate appearing for the petitioner, has submitted that above Industrial Dispute is bad in law and is against the evidence on record. He has submitted that the labour court has committed an error in rejecting the approval of the application of the petitioner and continued him in service. He has further submitted that contravention of Section 33(2) (b) did not have the effect of rendering the order of dismissal void or inoperative so as to permit the aggrieved workman to say that he continued to be in service and is entitled to receive wages from the employer. He has further submitted that by giving an application, the respondent did not challenge the legality, validity

and property of the Inquiry held against him by the petitioner. He has further submitted that the the Labour Court has proceeded only on the basis of surmises and conjectures. Since nobody has seen the respondent taking away the wood, the offence was not proved. While so holding, the Labour Court has lost track of the overwhelming evidence before the Inquiry Officer as well as before the Labour Court which would go to show that before the officer in charge, the respondent himself had admitted the theft and therefore, no other proof, with respect to the theft was required. He has further submitted that the respondent was a 'Watchman' and was responsible for safeguarding the property of the petitioner. Instead of safeguarding the property of the petitioner, the respondent indulged himself into theft. He has further submitted that the past conduct of the respondent was also proved to be bad and indisciplined and therefore, the Labour Court ought to have appreciated that the management has lost confidence in the respondent and in no circumstances the respondent could have been reinstated in service.

7. Mr.Shukla has specifically pointed out that the Labour Court has not considered the past misconduct of the respondent. In its reply it is also alleged that the respondent was remaining absent without permission, the respondent was found sleeping during his duty hours and a criminal complaint was filed against the respondent for committed theft. He has therefore, submitted that considering all these facts, the award passed by the labour court deserves to be quashed and set aside.

8. Mr.M.H.Rathod, learned advocate appearing for the respondent has submitted that the present petition is filed under Article 227 of the Constitution of India. The Labour Court has gone through the entire evidence on record and after appreciating the evidence the labour court came to the conclusion that no misconduct was committed by the respondent and award of reinstatement with backwages was valid and the punishment was reduced to stoppage of one increment. It is therefore, not open for this Court while exercising powers under

Article 227 to interfere in the award passed by the labour Court. He has further submitted that labour court passed order while exercising powers under Section 11(A) of the Industrial Disputes Act. The respondent made request to the labour court as looking to the alleged mis-conduct and the amount involved in the mis-conduct, the punishment of the dismissal was shockingly disproportionate to the mis-conduct. It is further submitted that looking to the evidence on record, no witnesses were examined before the departmental inquiry and therefore, the charges levelled against the respondent were not proved and it was based on mere presumption and assumption. It is also submitted that labour court came to the just and proper conclusion that if it is assumed that even the charges levelled against the respondent were found to be proved, the articles which were valued about Rs.15/- only and on that basis, considering 10 years service of the respondent, the punishment of dismissal was disproportionate, harsh and unjust and therefore, it was set aside. It is submitted that labour court came to the conclusion that

petitioner has not given any co-operation while conducting the reference before the Labour Court and also observed that a case of victimisation was found to be proved against the petitioner, because the respondent was a trade-union worker and also succeeded in reference no.383/85 for getting confirmation as a watchman and therefore, there was a victimisation while passing the punishment order of dismissal against the respondent. He has further submitted that an elaborate decision was given by the Labour Court in respect of each point and therefore, no interference is called for while exercising the powers under Section 227 of the Constitution of India. He has therefore submitted that petition deserves to be dismissed and the award passed by the labour court deserves to be confirmed. He has further submitted that the respondent is about to reach the age of superannuation and hence lenient view may be taken by suitably modifying the labour court's award.

9. Having heard the learned advocates appearing for

the respective parties and after having gone through the award passed by the Labour Court, and the averments made in the present petition, and after having carefully considered the submissions made by the learned advocates appearing on behalf of the respective parties, the Court is of the view that there were serious charges against the respondent. Even the past conduct of the respondent was not satisfactory. Several allegations were made and proceedings were initiated and necessary actions were also taken against the respondent. As far as the impugned award is concerned, it is true that there is serious charge of theft against the respondent and the amount involved is immaterial what is material is the conduct of the respondent. The labour court has after appreciation of evidence held that the order of dismissal was not justified. It is not open for this court to re-appreciate the evidence while exercising powers under article 227 of the Constitution of India. At the same time, the Court is of the view that claim of full back wages in such cases, is totally ill-founded. The recent trend in the judicial decision is that the courts

are very slow in awarding back wages and the principle of “No Work, No Pay” is given due weightage in many deserving cases. Looking to the gravity of charges levelled and proved against the respondent, the labour court's award for granting back wages is ill-founded and does not get the approval or seal of this Court. However, since the respondent is about to reach the age of superannuation, the award of reinstatement with continuity of service does not call for any interference.

10. In above view of the matter, award passed by the labour court is modified to the extent that the award of reinstatement is confirmed. The respondent is not entitled to any backwages. In the result, the petition is partly allowed. Rule is made absolute to the aforesaid extent. The petitioner is directed to reinstate the respondent within one month from the date of receipt of writ from this Court or from the date of receipt of certified copy of this order, whichever is earlier.

11. Before parting, it is made clear that the Court has taken this view looking to the peculiar facts of this case and considering the submissions of the parties. This may not be considered as precedent.

(K.A.PUJ, J.)

amit